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SUBJECT: BRAZIL PROMULGATES SAFEGUARD PROVISIONS FOR IMPORTS
FROM CHINA

REF: A) 04 Brasilia 2885, B) Brasilia 2367

1. Summary. After a failed attempt to secure voluntary export restraints from China, on October 6 the GoB published decrees establishing regulations for imposing safeguards on imports of Chinese products. Textile producers were the first to file petitions seeking relief; as many as 20 more sectors may file safeguard requests. Foreign Minister Amorim has stated an interest in continuing a dialog on voluntary export limits with China. End Summary.

2. On October 6, the GoB published in the Diario Oficial two decrees establishing regulations for implementation of safeguards on imports of Chinese products -- Decree 5,558 is specific to textiles and Decree 5,556 covers temporary safeguards for all other products (see details in paras 7 through 14).

3. Brazilian industries had been clamoring for safeguards as imports from China have surged this year. In 2003 and 2004, Brazilian exports to China far outstripped trade in the opposite direction. However, in the first nine months of this year, imports from China grew by 47.8 percent compared with the same period in 2004, while exports to China expanded at a rate of only 8.6 percent, squeezing Brazil's trade surplus to below \$1 billion.

4. Some 20 sectors have indicated an interest in seeking safeguards, including textiles, apparel, machinery and equipment, toys, shoes, eye glasses, tires, and transport equipment. Textile manufacturers were the first to file safeguard petitions under the new regulations. So far they have requested safeguards for seven products: corduroy, textured polyester thread, and five types of silk. According to the Brazilian Association for the Textile Industry (ABIT), imports of the silk products had increased 243 percent in volume from January through August 2005 in comparison with the same period in 2004. ABIT expects petitions to be submitted for 75 textile and apparel products in all, mostly for apparel. On October 13, eye glass producers followed suit with a petition.

5. Although the toy industry already benefits from a general safeguard, they argue that an additional safeguard targeting imports from China is necessary. In the first seven months of this year, toy imports from China increased by 94 percent compared with the same period in 2004. In 2002, imported toys from China accounted for 22 percent of the Brazilian market; today that figure is 48 percent. According to the shoe industry, Brazil imported 9.4 million pairs of shoes from China between January and August 2005, compared with only 4.3 million pairs in the first eight months last year.

6. Although the decrees were drafted in June, the GoB had held off implementation in the hopes of negotiating voluntary export restraints with China. When Minister of Development, Industry and Trade Furlan's mission to Beijing in mid-September failed to secure a Chinese commitment to limit its exports in certain sectors, the government moved forward with the new regulations. That being said, Minister Amorim has continued to state in public Brazil's openness to negotiating solutions for sectors submitting safeguard petitions. The regulations themselves, detailed below, provide for consultations as part of the safeguard deliberation process.

Safeguard Petition Process

7. The decree for textiles (Decree 5,558) provides industry with the ability to request safeguard action should an increase in Chinese imports of a specific product cause or threaten to cause an "imbalance" in the market for that product; the decree does not state what form the safeguard might take, but stipulates that it may not extend beyond December 31, 2008. The decree for other products (Decree 5,556) provides for safeguards in the form of additional tariffs and/or quotas, should a rapid increase in imports of a product from China cause injury or threaten injury to

domestic producers of that product or a similar product. This decree also deals with the specific case in which increased imports from China are the result of trade diversion caused by measures taken in other WTO member countries. Safeguards for products other than textiles may not extend beyond December 11, 2013.

18. Producers seeking relief must submit their safeguard petitions to the Foreign Trade Secretariat (SECEX) in the Ministry of Development, Industry and Trade. Brazil's Foreign Trade Chamber (CAMEX) will make the final decision on application of safeguards based on an analysis and recommendation from SECEX. SECEX has four months to close the investigation in the case of textiles, and eight in the case of other products. Importers, exporters and other interested parties may provide written submissions for a period of 30 days following initiation of the investigation. Upon opening the investigation, a request will be made for preliminary consultations with China. The Chinese government will be given 10 days from the initiation of investigation to respond to the request; the consultations must be held within 30 days.

19. For textiles, the decree stipulates that an "imbalance" exists when imports from China are increasing rapidly, either in absolute terms or relatively, such that they impede the orderly development of trade in the specific product. In making a determination, SECEX will take into consideration the impact of the imports on the domestic industry, reflected in changes in economic variables such as capacity utilization, sales, market share, and prices.

10. Once SECEX completes a preliminary positive determination for a textile product, consultations with China will again be requested if a pre-condition is met. The pre-condition is that China immediately limit exports of the product in question so that they do not exceed 7.5 percent of the quantity imported by Brazil during the first 12 months of the most recent 14 month period. The consultations must begin within 30 days from receipt of the request and can last for 90 days, with a possible extension if both parties agree. Should the consultation precondition not be met or the consultations not result in a mutually satisfactory result, a safeguard may be applied until December 31 of the year in which the first request for consultations was made. If the consultation request was made within the last three months of the year, the safeguard will be in force for a period of 12 months. CAMEX retains the authority to suspend the safeguard for reasons of public interest.

11. In making determinations for injury or market imbalance for other products, SECEX will consider the volume and rate of growth of imports in absolute and relative terms, the market penetration of the imports, and the impact on the domestic industries of both the product and of similar products as evidenced by changes in economic variables such as production, capacity utilization, stocks, sales, market share, prices, profits and losses.

12. Should SECEX/CAMEX conclude that a delay in applying a safeguard measure for a product (other than textile) would cause damage that would be difficult to repair, a provisional measure, in the form of an additional ad valorem and/or specific tariff, may be applied for up to 200 days. Notwithstanding, once SECEX makes a preliminary positive determination for a product, the GoB will again request consultations with China. The consultations must take place within 30 days and may last for a period of 60 days from the date of the request. Should the consultations not result in a mutually satisfactory result, a definitive safeguard, in the form of an additional ad valorem and/or specific tariff and/or a quantitative restriction will be applied for a period necessary to prevent or repair the market imbalance. Should the safeguard be applied for more than 2 years when the increase in imports was relative, or applied for more than 3 years in the case where the increase in imports was absolute, CAMEX must consider the possibility that China could suspend substantively equivalent concessions or obligations.

13. Decree 5,556 also outlines a separate process should the increase in imports be due to trade diversion. The decree states that trade diversion exists when a measure applied in a third WTO member country to a product imported from China in order to prevent or repair a market imbalance in that country, causes or threatens to cause an increase in exports of that product from China to Brazil. In making its determination on trade diversion, SECEX will take into consideration the actual or imminent increase in the share of product imports from China in the Brazilian market; the nature or extent of action adopted or proposed by China or the third WTO member country; the actual or imminent increase in the volume of imports from China owing to the measure taken or proposed by China or the third WTO member country; the market conditions (supply and demand) within the Brazilian market for the product; and the volume of

Chinese exports destined to WTO members which apply a provisional or definitive safeguard measure.

14. The provisions for trade diversion also provide for preliminary consultations with China. After SECEX makes a preliminary positive determination on trade diversion, the GoB will again request consultations with China and/or the third country applying the measure; the consultations would take place within 30 days and last up to 60 days. Should the consultations not reach a mutually satisfactory result, Brazil could withdraw concessions, or limit in another way, imports from China, "in proportion to what is necessary to prevent or repair the trade diversion." Application of a safeguard measure to remedy trade diversion would lapse 30 days after termination of the measure causing the trade diversion. If the measure causing trade diversion is modified, SECEX would re-examine the issue to determine if the safeguard should be revised, withdrawn, or maintained.

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